

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 93-670-W/S - ORDER NO. 94-884 ✓  
SEPTEMBER 9, 1994

IN RE: Application of Mountain Bay	) ORDER DENYING
Estates Utility Co., Inc. for	) PETITIONS FOR
Approval of an Increase in its	) REHEARING AND/OR
Water and Sewer Rates and Charges.	) RECONSIDERATION

This matter is before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and/or Reconsideration submitted by Mountain Bay Estates Utility Company, Inc. (Mountain Bay or the Company) and the Motion for Reconsideration submitted by the Foxwood Hills Property Owners Association (the POA) of Order No. 94-697 (July 25, 1994). Order No. 94-697 denied Mountain Bay its request for rate relief. After thorough consideration of Mountain Bay's and the POA's Petitions, the Commission finds and concludes that the Petitions should be denied for the reasons set forth below.

MOUNTAIN BAY'S PETITION FOR REHEARING  
AND/OR RECONSIDERATION

Mountain Bay contends the Commission erred by imputing the availability fees charged by Foxwood Corporation/National American Corporation (the developer) as operating revenues of the utility. Mountain Bay asserts that the the developer's assignment of its right to collect availability fees from lot owners in the Foxwood Hills subdivision to Johnson Properties, Inc., the new owner of the

utility, is not equivalent to an assignment of the availability fees to Mountain Bay. The Commission disagrees.

In Order No. 94-697, the Commission determined that, based on the evidence of record, it was likely that Johnson Properties would receive the availability fees which had been due to the developer.<sup>1</sup> Although Johnson Properties may decide not to actually use the availability fees for utility purposes, under the circumstances surrounding the sale of stock from the developer to Johnson Properties, the Commission found it fair and equitable to impute the amount of the fees to the utility's books as revenues.

The evidence of record supports the Commission's conclusion. The testimony indicates that the developer, the original owner of the utility, kept Mountain Bay's rates artificially low in order to attract purchases to the subdivision; the utility was able to remain viable only because it used the developer's revenues. Further, once Johnson Properties purchased the underlying stock of Mountain Bay, the utility's accounting procedures were revised to delete the availability fees from the utility's books.

Moreover, the Commission concluded it would be inequitable to current utility customers and lot owners who have paid availability fees for years in order to secure access to future utility service not to receive benefit from their payments through an imputed recognition of the fees as operating revenues to the utility. Since Mountain Bay has no rate base, the Commission did not have the option of reducing rate base by the amount of the availability fees.

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1. Tr. p. 55, line 23 - p. 56, line 15.

The Commission concludes its decision to impute the availability fees due to Johnson Properties as revenues of the utility is entirely justified under the circumstances of this case and does not constitute an abuse of discretion.

Mountain Bay also argues that the Commission has no jurisdiction over availability fees. The Commission disagrees.

Rates of public water and sewer utilities are subject to approval by this Commission. S.C. Code Ann. §58-5-10 (3) and §58-5-210 (1976). 26 S.C. Regs. 103-502.10 and 702.13 (Supp. 1993) specifically refer to availability fees as rates. The Commission clearly has jurisdiction over availability fees.

Finally, Mountain Bay contends the Commission erred by finding that the utility could only justify increased operating expenses of \$8,300. The Commission disagrees.

In its Order, the Commission reviewed the Company's Application containing all of Mountain Bay's current financial exhibits, including its operating expenses. The Commission noted that Mountain Bay stated a rate increase was necessary because of increasing regulation and general cost of living increases. The Commission recognized, however, that the Company could only substantiate increased expenses of \$8,300. The Commission's consideration of this testimony, along with all of the other evidence of record, was proper. The Commission's conclusion that Mountain Bay did not justify its request for a rate increase is fully supported by the substantial evidence of record and does not constitute an abuse of discretion.

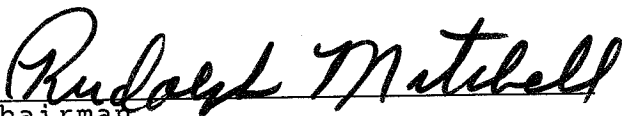
POA'S MOTION FOR RECONSIDERATION

The POA requests the Commission reconsider its holding regarding Mountain Bay's stock transfer and find that when a controlling stock interest in a utility is sold, the stock transfer must be approved. The Commission declines to reconsider its ruling on the issue of the stock transfer.

As fully addressed in Order No. 94-697, the Commission concluded that 26 S.C. Regs. 103-504 and 704 (1976) did not require Mountain Bay to obtain this Commission's approval prior to the transfer of its capital stock. The Commission finds this conclusion fully comports with this Commission's regulations and should not be reversed.

For the reasons set forth above, the Commission denies Mountain Bay's Petition for Rehearing and/or Reconsideration and the Foxwood Hill's Property Owners Association's Motion for Reconsideration.

IT IS SO ORDERED.

  
Chairman

ATTEST:

  
Executive Director

(SEAL)